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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,209	02/05/2002	Claudia Kirchner	VO-537	8090

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EXAMINER

KOHARSKI, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,209

Applicant(s)

KIRCHNER, CLAUDIA

Examiner

Christopher D. Koharski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-23 and 38 is/are allowed.
- 6) ☒ Claim(s) 1-10, 24-37, and 39-44 is/are rejected.
- 7) ☒ Claim(s) 8 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/05/2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/16/2002</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Examiner acknowledges amended claim 1, 11, 14, 15, 34, 35, 38 and 41, and cancelled claims 45-54. Examiner acknowledges the amendments to the specification to include priority.

Information Disclosure Statement

The information disclosure statement (IDS) that was submitted on 7/16/2002 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner is considering the information disclosure statement.

Claim Objections

Claims 8 and 11 are objected to because of the following informalities: The claims positively recite "... and electronic pump..." which is not present in any of the drawings. Appropriate correction is required.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the electronic pump must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

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number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Allowable Subject Matter

Claims 11-23 and 38 are allowed over the prior art of record.

Response to Arguments

Upon further consideration the indicated allowability of the claims 34 and 35 has been withdrawn. Rejections based on the newly considered references follow below for the remaining pending claims. Currently, claims 1-44 are pending for examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 24-25, and 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Bachman et al. (5,843,029).

Regarding claims 1, 24-25 and 34-35, Bachman et al. discloses a breast pump (Figure 1) that can be releasably attached to a container (Figure 2) with a connecting sleeve and pump piston (76) combined in a mutual cap element that is fixed to the cap means (Figure 2) with seating elements arranged (Figure 3) and pin bearing actuating handle with a retraction mechanism (85). The piston bore contains an arc shaped piston path with a snap in element (Figure 3).

Claim Rejections - 35 USC § 102

Claim 41 is rejected under 35 U.S.C. 102(b) as being anticipated by Samson (5,415,063).

Regarding claim 41, Samson discloses a breast pump (Figures 1 and 2) a breast pump that can be releasably attached to a container with a connecting sleeve and pump piston (76) combined in a mutual cap element that is fixed to the cap, with a retracting mechanism (58) with a protrusion (61) forming a stop between the handle and the container.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-7, 10, 26-28, 32-33, 36-37, 39, 40, 42, and 44 are rejected under 35 U.S.C 103(a) as being unpatentable over Bachman et al. in view of Williams (5,749,850). Bachman et al. but does not include a spiral spring and top cover tension system.

However, Williams et al. teaches a manual breast pump.

Regarding claims 2-7, 10, 26-28, 32-33, 36-37, 39, 40, 42, and 44, Williams et al. discloses a retracting mechanism that has a spiral spring (32) that acts in tension and compression to place force on the piston head and uses support element (36) and is retained in the support cap with a snap in means (Figure 3).

At the time of the invention, it would have been obvious to use the piston spring of Williams with the system of Bachman et al. because the addition of a spring retraction system allows for better and repeated handle movement. Both references are analogous in the art and with the instant invention; therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Williams et al

Claim Rejections - 35 USC § 103

Claims 8 and 29 are rejected under 35 U.S.C 103(a) as being unpatentable over Bachman et al. in view of Williams et al. in further view of Niederberger (5,810,772). The modified Bachman et al. meets the claim limitations as described above but does not include an electric pump to augment the manual pump.

However, Niederberger teaches a mother's milk pump. Regarding claims 8 and 29, Niederberger discloses a breast pump system with an electric pump that attached via a tube assembly (Figure 1).

At the time of the invention, it would have been obvious to use the electric pump of Niederberger with the manual system of Bachman et al. because the addition the electric pump provides the manual system with an alternative automated pump action to make the use of the device easier. Both references are analogous in the art and with the instant invention; therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Niederberger.

Claim Rejections - 35 USC § 103

Claims 9 and 30 are rejected under 35 U.S.C 103(a) as being unpatentable over Williams et al. in view of Niederberger in further view of Bachman et al. (5,843,029). Williams et al. and Niederberger meet the claim limitations as described above but does not include the connecting element that is - in shape.

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However, Bachman et al. teaches a manual breast pump. Regarding claims 9 and 30, the reference teaches a connecting element between the bore and cap that is conical in shape (76).

At the time of the invention, it would have been obvious to use the conical ring of Bachman et al. with the system of Williams et al. The addition of the sealing ring provides the system with additional vacuum leak resistance. Both references are analogous in the art and with the instant invention; therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Bachman et al.

Claim Rejections - 35 USC § 103

Claims 10, 31, and 43 are rejected under 35 U.S.C 103(a) as being unpatentable over Williams et al. in view of Niederberger in further view of Bachman et al. in further view of Kirchner (4,583,970). Williams et al., Niederberger, and Bachman et al. meets the claim limitations as described above but does not include a hole that can be used to adjust the vacuum level.

However, Kircher teaches a milk suction device. Regarding claims 10, 31, and 43, the reference teaches ventilation opening which can be covered by the hand to adjust the vacuum pressure (21).

At the time of the invention, it would have been obvious to use the ventilation opening of Kircher with the system of Williams et al. The addition of the ventilation opening allows the user to manually adjust the vacuum pressure level for better usage. Both references are analogous in the art and with the instant invention; therefore, a

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combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Kircher.

Claim Rejections - 35 USC § 103

Claim 44 is rejected under 35 U.S.C 103(a) as being unpatentable over Bachman et al. in view of Meyers et al. (5,542,921). Williams et al. meets the claim limitations as described above but does not include a secondary air-regulating unit.

However, Meyers et al. teaches an electric breast pump. Regarding claim 44, the reference teaches a secondary ventilation device that can be manually operated (Figure 5) that can be rotated and connects to the conduit (Figure 2) and is covered by a cap.

At the time of the invention, it would have been obvious to use the secondary air regulator of Meyers et al. with the assembly of Bachman et al. The addition of the secondary air regulator provides a better way to adjust the vacuum pressure. Both references are analogous in the art and with the instant invention; therefore, a combination is proper. Therefore, one skilled in the art would have combined the teachings in the references in light of the disclosure of Meyers et al.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Koharski whose telephone number is 571-272-7230. The examiner can normally be reached on 7:30am to 4:00pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Date:

7/11/2006



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